

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

BRIAN LEE CORBETT,

Petitioner,

v.

CIVIL ACTION NO. 2:16-cv-05814
(Criminal No. 2:10-cr-00015)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the Court is Petitioner Brian Lee Corbett’s Motion for Voluntary Dismissal in which he recognizes that the argument raised in his habeas petition filed pursuant to 28 U.S.C. § 2255 is now foreclosed by *Beckles v. United States*, 137 S. Ct. 886 (2017). (ECF No. 157.) On June 30, 2016, this action was referred to United States Magistrate Judge Omar J. Aboulhosn for submission of proposed findings of fact and recommendations for disposition (“PF&R”). Magistrate Judge Aboulhosn filed his PF&R on August 8, 2017, recommending that this Court grant Petitioner’s Motion for Voluntary Dismissal and dismiss this action without prejudice.¹ (ECF No. 159.)

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file

¹ The Court notes that in the United States’ response to Petitioner’s motion, it “moves the Court to dismiss movant’s § 2255 motion with prejudice” (ECF No. 158.) Insofar as this may be construed as a separate motion, it is **DENIED** for the reasons explained in the PF&R, (*see* ECF No. 159 at 6).


timely objections constitutes a waiver of *de novo* review and a party's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Objections to the PF&R in this case were due on August 25, 2017. To date, no objections have been filed. The Court therefore **ADOPTS** the PF&R, (ECF No. 159), **GRANTS** the Motion for Voluntary Dismissal, (ECF No. 157), and **DISMISSES WITHOUT PREJUDICE** Petitioner's § 2255 motion, (ECF No. 133).² The Court further **DIRECTS** the Clerk to remove this case from the Court's docket.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: October 20, 2017



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE

² The Court notes that Petitioner's § 2255 Motion is listed on the docket as ECF No. 133 and as ECF No. 140. The second filing was in response to the Fourth Circuit's order granting Petitioner authorization to file his second or successive § 2255 motion, (ECF No. 139). Because it is identical, however, the Court **DENIES AS MOOT** the duplicative motion, (ECF No. 140).